



GOVERNMENT OF INDIA

Chandigarh Administration Gazette

Published by Authority

NO. 117] CHANDIGARH, WEDNESDAY, SEPTEMBER 08, 2021 (BHADRA 16, 1943 SAKA)

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Notification

The 9th April, 2021

No. 52 Gaz.II/XXI.C.22.—In exercise of the powers conferred by Section 12 of the Code of Criminal Procedure, 1973, Hon'ble the Chief Justice and Judges have been pleased to confer upon the following member of H.C.S.(JB), the powers of Chief Judicial Magistrate to be exercised within U.T.Chandigarh, with effect from the date of assuming the charge :—

Sr. No.	Name of Officer	Territorial Jurisdiction
1	Dr. Aman Inder Singh	Chandigarh

BY ORDER OF HON'BLE THE CHIEF JUSTICE AND JUDGES

(Sd.) . . . ,
Registrar General.

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Notification

The 26th August, 2021

No. 143 Gaz.II/XXI.C.22.—In supersession of this court's Notification No. 88 Gaz.II/XXI.C.22, dated 20.07.2021 and in exercise of the powers conferred by Section 13(1) of the Code of Criminal Procedure, 1973, Hon'ble the Chief Justice and Judges have been pleased to confer upon the following IAS Probationer, AGMUT cadre, the powers noted against his name in Column No. 3 below to be exercised within the limit of the District shown in column No.4 below :—

Sr. No.	Name of Officer	Powers	Territorial Jurisdiction	Remarks
1	2	3	4	5
1	Sh. Shishir Gupta	Judicial Magistrate IInd Class	Chandigarh	With effect from 31.08.2021 to 04.09.2021

Signature Not Verified
Digitally signed by
Jalinder Kumar
Date: 2021.09.08
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BY ORDER OF HON'BLE THE CHIEF JUSTICE AND JUDGES

(Sd.) . . . ,
Registrar General.

(635)

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CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 2nd September, 2021

No. 13/1/9787-HII(2)-2021/9719.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL), dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 23/2018, dated 29.07.2021 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between:

RAJ KUMAR, DRIVER, S/O SHRI KARAN SINGH, R/O HOUSE NO.565, GATE NO.1, GALI NO.4, VIKAS NAGAR, VILLAGE NAYAGAON, TEHSIL KHARAR, DISTRICT MOHALI, PUNJAB (Workman)

AND

1. CHANDIGARH SPORTS COUNCIL THROUGH ITS SECRETARY, SPORTS COMPLEX, HOCKEY STADIUM, SECTOR 42, CHANDIGARH.
2. S. S. SERVICE PROVIDER THROUGH ITS AUTHORISED SIGNATORY 37-D, MODEL TOWN, PATIALA, PUNJAB (Management)

AWARD

1. This award shall dispose off the industrial dispute received in this Court under Section 2-A(2) of the Industrial Disputes Act, 1947 (hereinafter called 'ID Act').

2. Case of the workman in brief is that he was engaged by management No.1 initially as Car Driver on 10.03.2011 on D.C. rate fixed by the Deputy Commissioner, Union Territory Chandigarh and was paid wage of ₹5,261/- per month after deduction and remained in service upto 02.01.2018 and his attendance was not marked by management No.1 with effect from 03.01.2018. Last drawn wages of the workman was ₹14,400/- after statutory deductions and total wages was ₹16,695/- per month at the time of illegal termination of services. He had worked continuously with effect from 10.03.2011 till 02.01.2018 with the management without any break though management No.1 engaged various contractors for outsourcing service from time to time. Management No.1 lastly had given the contract of outsourcing service to management No.2 with effect from August, 2017. Management No.1 has written a letter to management No.2 regarding termination of Drivers including the workman *vide* No.CSC-UT-2017/2455, dated 20.12.2017 but no information of the said letter was ever given to him by management No.1 or management No.2 till date. Even the wages from 01.12.2017 to 02.01.2018 was also not paid to him till date. The management had illegally terminated the services of the workman with effect from 03.01.2018 without following the procedure prescribed under the ID Act. Junior Car Drivers to the workman has been retained in service whereas the services of the workman has been illegally terminated *vide* verbal order on 03.01.2018 by the management. The managements have violated the provisions of Section 25-F, 25-G & 25-H of the ID Act. Before illegally terminating the services of the workman, no notice, charge sheet have ever been served upon him and no inquiry has been conducted against the workman. The workman is not gainfully employed anywhere from the date of termination of illegally services on 03.01.2018 till date. Management No.1 is adopting illegal labour practice by appointing Car Driver of Sports Department, Union Territory Chandigarh on the bus of management No.1 without any issuance of orders of competent authority. Even the condemn vehicles / car No.CH-01-G-0066 has been used by the officer without any authority. The officer of management No.1 are habitual in violating the law for their own benefits and similarly the said officer had illegally terminated the services of the workman just to hide their illegal act and nasty activities. Neither the principal employer i.e. management No.1 is registered with the Labour Department for outsourcing the services nor the contractor-management and even the subsequent contractor have obtained licence for engaging the outsource labour from the Labour Department. The workman had filed a demand notice dated 05.01.2018 which was received in the office of the Assistant Labour Commissioner-cum-Conciliation Officer, Union Territory Chandigarh on 09.01.2018 and during the

conciliation proceedings no amicable settlement took place and ultimately the Assistant Labour Commissioner-cum-Conciliation Officer advised the workman to proceed further as deem fit as per Sub-section 2A(2) of the Industrial Disputes (Amendment) Act, 2010. No principle of 'first come last go' has been adopted while discontinuing/terminating the services of the workman. Even the management has not obtained licence from the concerned Labour Department on the date of termination of the services of the workman. He is a regular employee of the management as he had worked more than 240 days. Ultimately, it is prayed that the workman be reinstated into service with continuity of service and full back wages and all other consequential benefits from time to time. It is further prayed that the management be directed to pay the wages from 21.12.2017 to 02.02.2018 along with interest at the rate 18% from the date of due till its payment.

3. Management No.1 contested the case of the workman and filed written statement raising preliminary objection that there is no relationship of employer and employee between management No.1 and the workman. The services of certain employees were decided to be taken through the outsourcing agencies and accordingly an agreement dated 17.03.2010 was executed between the Administrator U.T., Chandigarh and M/s Ascenture Management Service Private Limited. As per Clause 6(b) all the employees provided by the service provider shall only be the employees of the service provider and not of Chandigarh Sports Council i.e. management No.1. Thereafter the services were provided by another outsourcing agency namely M/s Rajeev Associates, with whom service agreement dated 13.12.2012 was executed and presently management No.2 i.e. M/s S. S. Service Provider has been providing the required services as per service agreement dated 01.08.2017. On merits, it is pleaded that the workman was provided by the service provider - Ascenture Management Services Private Limited, in view of the terms & conditions of the service agreement executed with the said service provider on the agreed service charges under the agreement. The service charges have been regularly paid to the service provider. The services of three Drivers provided by management No.2 were no longer required due to condemnation of vehicles so management No.1 intimated *vide* letter dated 20.12.2017 to the service provider i.e. management No.2 and since that date the said three employees including workman never gave any services. The service charges for the month of December 2017 were paid to the service provider on 04.01.2018. Since the workman was not having any direct concerned with management No.1 so there was no requirement to intimate him. The workman was not employee of management No.1 so there is no question of wages or termination. There is also no question of violation of any provisions of the ID Act. Other averments of the case of the workman were denied and ultimately, it is prayed that the claim of the workman be dismissed *qua* management No.1

4. Upon notice, none appeared on behalf of management No.2 as such proceeded against *ex parte*.

5. The workman filed replication reiterating the averments of his case and denied the averments made in written statement. From the pleadings of the parties, following issues were framed by the then Presiding Officer :—

1. Whether there is no employer-employee relationship between management No.1 and workman ? OPM-1
2. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
3. Relief.

6. In support of the case, the workman stepped into the witness box as AW1 and closed the evidence. On the other hand, management No.1 examined Shri Suresh Kumar - Senior Assistant, Sports Department, Chandigarh Administration as MW1. Learned representative for management No.1 closed the evidence.

7. I have heard the learned representatives for the parties and have gone through the file carefully. My findings on the issues framed in this case are as follows :—

ISSUE No. 1 & 2 :

8. Onus to prove issue No.1 was on management No.1 whereas onus to prove issue No.2 was on the workman but both the issues are taken up together for the sake of convenience to avoid repetition of discussion. In order to prove these issues the workman examined himself as AW1, who deposed that he was engaged by

management No.1 initially as Car Driver on 10.03.2011 on DC rates fixed by the Deputy Commissioner, Union Territory Chandigarh and he was paid wages of ₹5,261/- per month after deduction and he remained in service upto 02.01.2018. His attendance has not been marked by management No.1 i.e. from 03.01.2018. The last drawn wages of him was ₹14,400/- after statutory deduction and total wages was ₹16,695/-per month. He had worked continuously with effect from 10.03.2011 till 02.11.2018 with the management. Management No.1 lastly given the contract of outsource servicing to management No.2 with effect from August 2017 and he worked with the management upto 02.01.2018. He further deposed that management No.1 had written letter to management No.2 regarding termination of Drivers including him *vide* No.CSC-UT-2017/2455, dated 20.12.2017 but no information of the said letter was ever given to himself by management No.1 and 2. He remained on duty upto 02.01.2018. Even the wages from 01.12.2017 to 02.01.2018 has not been paid to him till date. Management No.1 stopped to mark his presence through biometrix with effect from 03.01.2018 onwards. The management had illegally terminated his services. He further deposed that junior Car Drivers were retained in service whereas services of himself were terminated illegally *vide* verbal order dated 03.01.2018. The management has violated the provisions of Section 25-F, 25-G & 25-H of the ID Act and services of himself have been terminated without following the provisions of the ID Act. Before terminating the services of himself no notice, charge sheet has ever been served upon him. No inquiry has been conducted against him so action of terminating his service *vide* verbal order is illegal and against law. Management No.1 is adopting illegal practices by appointing Car Driver of Sports Department, Union Territory Chandigarh on buses of management No.1 without any issuance of orders of the competent authority. Even the condemn vehicle / car No.CH-01-G-0066 has been used by the official without any authority. The management had not conducted any inquiry or served notice or paid compensation in lieu of notice to himself and violated the provisions of the ID Act. He further deposed that neither the principal employer i.e. management No.1 is registered with the Labour Department for outsourcing the service nor the contractor i.e. management No.2 has obtained the licence for engaging the outsource labour from the Labour Department. He has filed the demand notice dated 05.01.2018 which was received in the office of the Assistant Labour Commissioner, Union Territory Chandigarh. No amicable settlement took place during the conciliation proceedings so the Assistant Labour Commissioner-cum-Conciliation Officer *vide* memo No.897, dated 15.03.2018 advised him to proceed further as deemed fit as per provision of Section 2-A(2) of the Industrial Disputes (Amendment) Act, 2010. He further deposed that attendance of himself during the service has been marked by official of management No.1 from the date of joining till the date of illegal termination. There is relationship of employer & employee between management No.1 & himself. He is an employee of management No.1 and his work was also supervised by management No.1 and there was no complaint during his tenure of service.

9. Learned representative for the workman has argued that the workman was appointed as Driver on 10.03.2011 on DC rates. He was illegally terminated on 03.01.2018 without issuing a notice and conducting any inquiry whereas there exist employer-employee relationship between the management No.1 and workman. He has duly proved on record document Exhibit 'W1' to 'W35' through which it can be duly proved that he was appointed as Driver by management No.1. He was doing his duty without any complaint so it is management No.1 who have got him illegally terminated so issue No.1 be decided in against management No.1 and favour of the workman whereas issue No.2 be decided in favour of the workman and against management.

10. On the other hand, management examined Shri Suresh Kumar -Senior Assistant, Sports Department as MW1 who deposed that there is no relationship of employer-employee between management No.1 & workman. The workman was never appointed by management No.1 rather he was employee of management No.2 service provider. After execution of service agreement with the service provider, as per terms & conditions of the agreement, requisition was sent to the service provider for providing support and allied staff. The service provider provided the allied staff and the workman was also provided by the service provider. He further deposed that management No.1 never paid any salary or charges directly to the workman or to any employee of service provider and only paid charges to the service provider, as per terms & condition of service agreement. He further deposed that consolidated bill of deputed staff was being raised by the service provider and management No.1 had been paying the sanctioned amount to the service provider and all employees of the service provider were being paid by the service provider. He further deposed that after the expiry of agreement period, the service provider was given extensions and the copies of extensions are Exhibit 'R3' containing pages 42.

Thereafter fresh tender was invited and the tender was allotted to other successful outsourcing agency i.e. M/s Rajeev Associates for the period from 15.12.2012 to 14.12.2013 and copy of the agreement is Exhibit 'R4'. Further the agreement was extended in favour of the same outsourcing agency for the period from 15.12.2013 to 14.12.2014, copy of extension is Exhibit 'R5'. The contract was extended for three more months with effect from 15.12.2014 to 14.03.2015, copy of the same is Exhibit 'R6'. Thereafter again tender was invited for outsourcing various allied and support services for the period from 01.04.2015 to 31.03.2016 and the tender was allotted in favour of outsourcing agency namely M/s Mohini Securities Agency, copy of tender along with service agreement is Exhibit 'R7'. Thereafter the contract was allotted to M/s S. S. Services Provider for the period from 01.08.2017 to 31.07.2018, copy of tender notice along with agreement is Exhibit 'R8'. The workman was provided by M/s Acsenture Management Service and after the change of service provider, the workman enrolled himself with new service provider, who further provided the workman along with other allied staff. Management No.1 neither appointed any person / employee of allied and support services after decision of outsourcing nor paid any salary or daily wages directly to any of such allied staff provided by outsource agency. Copies of bills raised by the service provider along with attendance sheet and sanction and disbursement orders thereof from the period 01.04.2010 to December 2017. He further deposed that due to condemnation of vehicles, three Drivers become surplus and accordingly the council wrote a letter dated 20.12.2017 to management No.2 for discontinuation of three Drivers of the condemned vehicles Exhibit 'R10'. The workman was deployed on Maruti Esteem car bearing registration No.CH-01-G-0066 and the same was condemned after the same was found not fit and was auctioned in open auction. After condemnation of vehicles, management No.1 purchased a new vehicle in year 2018 and send requisition to the then service provider for sending the suitable penal of 3-4 Drivers. Accordingly the service provider send three Drivers, out of which one Shri Gurdas Singh was found suitable and was deployed on the said vehicle. Copy of purchase documents of new vehicles and deployment order of Shri Gurdas Singh are Exhibit 'R12'. He further deposed that there is no relationship of employer & employee between them. The workman was never appointed by management No.1. Management No.1 engaged the services of various supporting and allied staff through the contractors/outsourcing agencies. The workman was never appointed by management No.1 and was not paid any wages by management No.1 rather he was appointed and paid by the service provider. The services charges for the month of December 2017 were paid to the service provider on 04.01.2018 and there is nothing due towards service provider.

11. Learned representative for management No.1 has argued that the workman is not direct employee of management No.1 rather management No.1 is the principal employee and have outsourced the services of employee and the workman was provided by the outsource service contractor. He further argued that three vehicle were declared condemn in 2017 and separate letter was written to management No.2 for discontinuing of the services of surplus staff so no termination was ever made by management No.1. He further argued that new vehicle has been purchased in the year 2018 and send requisition to then service provider for sending the suitable penal of three Drivers, out of which one suitable Driver was deployed on the said vehicle. He prayed for deciding issue No.1 in favour of management No.1 and against the workman and for deciding issue No.2 against the workman.

12. After giving it is nowhere disputed that the workman was serving as Driver on 10.03.2011 on DC rates and he was paid wages of ₹ 5,261/- and it is also not disputed that lastly contract of outsource service was given to management No.2 i.e. M/s S. S. Service Provider from August 2017 and the workman also worked with him. As per averment of the workman, he is employee of management No.1 and management No.1 has written letter dated 20.12.2017 to management No.2 regarding termination of Drivers including himself. He remained in duty upto 02.01.2018. Firstly, this Court is to see whether there exists relationship of employer-employee between the workman and management No.1. No doubt the workman was working under management No.1 but the workman himself admitted in claim statement stating that management No.1 engaged the services of the various support and allied staff through contractor i.e. outsource agencies and management had written letter to management No.2 regarding termination of Drivers including himself. After perusal of oral & documentary evidence on record, it is crystal clear that management No.1 outsourced the support and allied services and in the month of February, 2010, services of the workman has been taken on DC rates out of CSC funds. Accordingly, the service agreement dated 17.03.2010 for a period of one year i.e. from 01.04.2010 to 31.03.2011 was executed between the Administrator, Union Territory Chandigarh and

M/s Accenture Management Services Private Limited containing terms & condition of service. As per Clause 6(b) of the service agreement, all the employees provided by the service provider shall be employees of service provider and not of Chandigarh Sports Council and the services of charges, as per terms & conditions of the agreement, are being paid by management No.1 i.e. Chandigarh Sports Council to management No.2 i.e. contractor/service provider ever months. The true copy of tender notice along with correspondence with successful outsource agency and agreement dated 17.03.2010 is Exhibit 'R2'. Thereafter requisition was sent to the service provider for providing services to support and allied staff. As per evidence, it is crystal clear that consolidated bill of deputed staff was being raised by service provider and management No.1 had been paying the sanctioned amount to the service provider and all the employees were being paid wages accordingly. Management No.1 also proved on record documents whereby agreement was extended Exhibit 'R3' to 'R6'. As per Exhibit 'R8' the contract was allotted to M/s S. S. Services Provider for the period from 01.08.2017 to 31.07.2018. Meaning thereby management No.1 neither appointed any person / employee of support and allied services nor paid any salary or daily wage directly to the employees. Copy of bill raised by the service provider along with attendance sheet, sanction and disbursement order are Exhibit 'R9'. Further management No.1 duly proved on record Exhibit 'R10' in which it is clearly written that due condemnation of vehicles three Drivers, one of which was workman, become surplus and they have wrote letter to the service provider for discontinuation of three Drivers. Copy of condemnation proceedings are Exhibit 'R11'. Further management No.1 purchased a new vehicle in the year 2018 and sent requisition to the service provider for suitable panel of 3-4 Drivers and out of which one Shri Gurdas was found suitable and deployed. Copy of documents with regard to purchase of new vehicle and deployment order of Shri Gurdas Singh are Exhibit 'R12'. In view of the aforesaid discussion, it is crystal clear that it is not the case of termination rather letter has already been written by management No.1 to management No.2 after condemnation of vehicles three Drivers become surplus and the workman is not direct employee of management No.1 and the service charges for the month of December 2017 to already been paid to the service provider and the nothing is due towards the service provider. Further perusal of documents Exhibit 'R8', which also contains agreement dated 01.08.2017, reveals that as per Clause 12 of the said agreement, the agreement shall be effective for a period of one years with effect from 01.08.2017 to 31.07.2018 meaning thereby the contract of management No.2 i.e. M/s S. S. Services Providers has been expired on 31.07.2018.

13. In the light of discussion made above, there is no employer-employee relationship between management No.1 and the workman and the workman has failed to prove that his services were terminated illegally by the management. Accordingly, issue No.1 is decided in favour of management No.1 and against the workman whereas issue No.2 is decided against the workman and in favour of the management.

RELIEF :

14. In the light of findings on the issue No.2 above, this industrial dispute is declined. Appropriate Government be informed. File be consigned to the record room.

Dated : 29.07.2021

(ANSHUL BERRY) ,
Presiding Officer,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No.PB0095.

Secretary Labour,
Chandigarh Administration.

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